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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,336	11/12/2003	Mark Weber	NOVA 9250	6814

1338 7590 06/01/2006

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EXAMINER	
CHEVALIER, ALICIA ANN	
ART UNIT	**PAPER NUMBER**
1772	

DATE MAILED: 06/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/706,336	WEBER ET AL.	
	Examiner	Art Unit	
	Alicia Chevalier	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 March 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

RESPONSE TO AMENDMENT

1. Claims 1-3 are pending in the application.

2. Amendments to the claims, filed on March 16, 2006, have been entered in the above-identified application.

REJECTIONS

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 103

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whetten et al. (U.S. Patent No. 5,804,660) in view of deGroot et al. (U.S. Patent No. 5,747,594).

Whetten discloses a container (*col. 2, lines 2-7*) having a nominal volume of 100 mL to 12 L (*col. 2, line 5, 16 ounces is equivalent to 473 mL and 1 gallon is equivalent 3.8 L*) prepared by injection molding (*col. 1, line 48*) of ethylene copolymer (*col. 1, lines 20-28*). The ethylene copolymer resin is characterized by a density from 0.950 g/cc to 0.955 g/cc (*col. 10, lines 21-25*) and a viscosity less than 3.5 Pascal seconds (*col. 7, lines 32-35, 0.01 kpoise is equivalent to 1 Pascal second and 15 kpoise is equivalent to 1500 Pascal seconds*) and a molecular weight distribution from 2.2 to 2.8 (*col. 8, lines 60-62*).

Whetten fails to disclose the Vicat softening point and the hexane extractable content.

deGroot discloses ethylene copolymer for food storage containers (*col. 1, lines 30-35*) exhibiting a low hexane extractives and a high Vicat softening point (*col. 2, lines 10-41*). A high Vicat softening point promotes heat resistivity and are more economically prepared (*col. 2, lines 4-20*). A low level of hexane extractives indicates a lower tendency for low molecular weight impurities or polymers fractions to migrate into sensitive packaged goods such as foodstuffs in food contact applications (*col. 1, lines 49-53*).

Therefore, the exact Vicat softening point and hexane extractable content of the contained is deemed to be a result effective variable with regard to the heat resistivity. It would require routine experimentation to determine the optimum value of a result effective variable, such as Vicat softening point and hexane extractable content, in the absence of a showing of criticality in the claimed Vicat softening point and hexane extractable content. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated by have a high Vicat softening point and a low level of hexane extractives in order to promotes heat resistivity and are more economically prepared (*col. 2, lines 4-20*) and lower the tendency for low molecular weight impurities or polymers fractions to migrate into sensitive packaged goods such as foodstuffs in food contact applications (*col. 1, lines 49-53*).

The combination of Whetten and deGroot disclose all the limitations of the ethylene copolymer used to make the container. Therefore, the claimed average test drop height point value and total impact energy required for wall failure is deemed to be inherent, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art.

ANSWERS TO APPLICANT'S ARGUMENTS

5. Applicant's arguments in the response filed March 16, 2006 regarding the previous rejection of record have been considered but are moot since the rejections have been withdrawn.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac
5/30/06

ALICIA CHEVALIER
PRIMARY EXAMINER